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No. 93-1260

In The

Supreme Court of the United States

October Term, 1993

UNITED STATES,

Petitioner,

v.

ALFONSO LOPEZ, JR.,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF NATIONAL SCHOOL SAFETY CENTER; NATIONAL CRIME PREVENTION COUNCIL; AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS; NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS; NATIONAL CRIME PREVENTION INSTITUTE; NATIONAL ASSOCIATION OF SCHOOL RESOURCE OFFICERS; NATIONAL ASSOCIATION OF SCHOOL SAFETY AND LAW ENFORCEMENT OFFICERS; DR. STUART GOTHOLD, SUPERINTENDENT OF LOS ANGELES COUNTY SCHOOLS, CALIFORNIA, AS AMICI CURIAE IN SUPPORT OF PETITIONER UNITED STATES

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Department of the Treasury – Bureau of Alcohol, Tobacco, and Firearms, *Yearly Report of Imported Firearms* (1991) 11

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Metropolitan Life Insurance Co., *The Metropolitan Life Survey of the American Teacher 1993* (Louis Harris & Associates, Inc., 1993) 10

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National Institute for Citizen Education in the Law and the National Crime Prevention Council, *Teens, Crime, and the Community*, West Publishing Company, St. Paul, MN, 1988 3

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BRIEF OF NATIONAL SCHOOL SAFETY CENTER; NATIONAL CRIME PREVENTION COUNCIL; AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS; NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS; NATIONAL CRIME PREVENTION INSTITUTE; NATIONAL ASSOCIATION OF SCHOOL RESOURCE OFFICERS; NATIONAL ASSOCIATION OF SCHOOL SAFETY AND LAW ENFORCEMENT OFFICERS; DR. STUART GOTHOLD, SUPERINTENDENT OF LOS ANGELES COUNTY SCHOOLS, CALIFORNIA, AS AMICI CURIAE IN SUPPORT OF PETITIONER UNITED STATES

INTERESTS OF AMICI

This brief *amici curiae* is respectfully submitted pursuant to Supreme Court Rule 37. Consent to the filing of

this brief has been granted by counsel for the parties; the letters of consent have been lodged with the Clerk of this Court. Consent to addition of *amici* has been given orally.

This case, *United States v. Lopez*, will impact directly on school safety throughout the Nation and specifically the ability of Congress to help ensure that school campuses and surrounding areas are safe and welcoming.

The National School Safety Center (NSSC) is a nonprofit partnership between the United States Departments of Justice and Education and Pepperdine University. The Center is funded by the federal Office of Juvenile Justice and Delinquency Prevention and the Department of Education. This partnership, which NSSC represents nationwide, was established to promote cooperation among the Nation's legal, law enforcement, and education communities to positively and effectively address the problems of crime, violence, vandalism, discipline, and truancy disrupting our Nation's schools.

NSSC is especially concerned that the limitation upon Congress resulting from the Fifth Circuit's decision would be detrimental, because federal involvement may be critical in dealing cooperatively with certain forms of school crime or violence including firearms possession. With its commitment to promote school safety and knowledge of school safety issues, the Center believes it may positively assist the Court in a reasonable and effective manner as it considers the case.

The National Crime Prevention Council (NCPC) is a private, nonprofit, tax-exempt organization that works

with communities around the country to help them prevent crime. The Council conducts public education campaigns, trainings, and demonstration programs; it publishes a variety of materials and works with such major institutions as schools and law enforcement agencies in all 50 states. NCPC is the co-author of the *Teens, Crime, and the Community* curriculum and program, now in use in more than 500 schools and other youth-related institutions. NCPC's mission is to forge a nationwide commitment by people acting individually and together to prevent crime and build safer, more caring communities. Since NCPC is comprised of a network of citizens, professionals, and organizations that implement crime prevention programs at the grassroots level and since its programs involve schools, youth and community groups, NCPC members will be directly influenced by the Court's holding in this case.

The American Association of School Administrators (AASA) is a professional association representing educational leaders in North America and other parts of the world. AASA is dedicated to supporting and assisting school system and other education leaders to achieve the highest quality education for all learners through personal, professional, organizational and leadership development and advocacy for public education. The decision in this case will directly impact AASA members who daily confront the issue of firearms in and around schools.

The National Association of Secondary School Principals (NASSP) is a professional organization representing more than 40,000 site administrators who manage the nation's middle-level and senior high schools. NASSP's

members are directly responsible for the safety and education of our nation's youth. NASSP members are responsible for a major proportion of the Nation's 100,000 schools, 2.4 million teachers, and 44 million students. The growing presence of firearms in the general community poses a major threat to these teachers and students which NASSP members believe must be countered in every way possible.

The National Crime Prevention Institute (NCPI) provides crime and loss prevention training for police officers and managers, security administrators, citizen leaders, and others concerned with public and private safety and security. Since its establishment in 1971, over 30,000 people have taken part in various NCPI programs. NCPI staff and adjunct faculty also conduct research and provide risk analysis audits for public and private organizations. NCPI is located in Louisville, Kentucky, and is a unit of the Justice Administration at the University of Louisville. NCPI trained practitioners will be directly influenced by the Court's decision in this case.

The National Association of School Resource Officers (NASRO) is a professional organization comprised of law enforcement officers working in educational environments, educators and parents concerned about the educational safety of children. NASRO is primarily a training organization to keep officers informed of the most current policies, trends and procedures. NASRO members serve schools in 37 states and Canada and are directly influenced by court decisions about firearms in and around schools.

The National Association of School Safety and Law Enforcement Officers (NASSLEO) is a professional organization comprised of individuals whose primary occupation is the administration or supervision of school security/school police within a school system's administrative structure as well as individuals, firms, agencies or organizations who demonstrate an interest in the aims and interests of NASSLEO. One of the stated objectives of the Association is to promote legislation at the federal level that is in the best interest of children, educational professionals and school security officers. NASSLEO members regularly confront firearms in and around schools and would be directly influenced by the decision in this case.

Dr. Stuart Gothold is the Superintendent of the Los Angeles County, California, Office of Education. This office comprises the second largest urban school district in the Nation and includes 81 school districts, 1,665 schools, 58,669 teachers, and 1,455,867 students. This office is responsible for reviewing suspension, expulsion, and discipline policies to ensure statutory and constitutional compliance by the 81 districts. Therefore, court decisions, such as *United States v. Lopez*, directly impact this office.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 2 F.3d 1342 (5th Cir. 1993), *reh'g, en banc, denied*, 9 F.3d 105 (5th Cir. 1993).

SUMMARY OF ARGUMENT

Our Nation's schools must have an environment for learning that is safe and welcoming. Students cannot be expected to learn where schools are plagued with crime and violence.

Schools serve a function of national importance. Their success or failure directly affects the economic viability of this Nation; their success or failure directly affects our capability to prepare and maintain highly skilled individuals for our national defense; and their success or failure directly affects our Nation's quality of life.

Schools face problems caused by crime and violence. These problems are national in scope. The issues of drugs, gangs and weapons in school are integrally related. The federal government can and should play a role in making our schools safe and welcoming.

The impact of the Fifth Circuit's decision limits the role of the federal government in dealing with crime and violence in and around schools. This limitation is unwarranted in view of the modern role of educational institutions and the investment the federal government makes in education. The Commerce Clause allows the federal government to curb school crime and violence through such measures as the Gun-Free School Zones Act of 1990.

In deciding this case, the Court will resolve a split between the Fifth Circuit and the Ninth Circuit. The Ninth Circuit upheld the Gun-Free School Zones Act of 1990 in *United States v. Edwards*, 13 F.3d 291 (9th Cir.

1993). This Court should follow the view of the Ninth Circuit.

ARGUMENT

A. STUDENTS AND STAFF SHOULD ENJOY A HALO OF SAFETY AND SECURITY IN AND AROUND SCHOOLS

"[I]n recent years," as this Court has recognized, "school disorder has often taken particularly ugly forms; drug use and violent crime in the schools have become major social problems." *New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985). Crime and violence affecting schools occurs not only on campus but also in the immediate vicinities and neighborhoods of our schools. Stated succinctly, schools and their immediate surroundings must be "safe and welcoming." *See In re William G.*, 40 Cal. 3d 550, 709 P.2d 1287, 1295, 221 Cal. Rptr. 118 (1985). Students and staff should enjoy a halo of safety and security in and around schools.

Neighborhood factors do impact school safety. *See* 1 NIE, U.S. Dept. of Health, Education and Welfare, *Violent Schools – Safe Schools: The Safe School Study Report to the Congress* at 121-22 (1978). Crime rate and the presence of gangs in school neighborhoods make a difference. *See* NIE, U.S. Dept. of Health, Education and Welfare, *Violent Schools – Safe Schools: The Safe School Study Report to the Congress*, Executive Summary at 9 (1978). School campuses frequently reflect the crime and violence of adjacent areas. *See generally* National School Safety Center,

School Crime and Violence Statistical Review (March 1994) (highlighting various statistical studies).

Statistical data clearly demonstrates the need for a zone of safety and security around our Nation's schools. Eighty-two percent of school district officials recently reported that student violence had increased over the last five years. *See* National School Boards Association, *Violence in the Schools: How America's School Boards are Safeguarding Our Children* (1993). This increase involves, in part, an increase in accessibility to firearms.

A 1990 survey queried 11,631 students in grades 9-12 from the 50 states asking the question: "During the past 30 days, how many times have you carried a weapon, such as a gun, knife, or club for self protection or because you thought you might need it in a fight?" Nearly 20 percent of the students reported they had carried a weapon at least once during the 30 days preceding the survey. *See* Centers for Disease Control Morbidity and Mortality Weekly Report, *Weapon-Carrying Among High School Students – United States, 1990* at 681-2 (1991). This high level of firearms possession among our Nation's youth continues. One recent study suggests that 39.9 percent of Virginia's high school-aged male students surveyed had carried a weapon during the preceding month. *See* Virginia Dept. of Education, *1992 Youth Risk Behavior Survey Report* at 8 (1992). In a larger study, some 22 percent of students from schools in some areas were found to carry guns. National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, *Gun Acquisition and Possession In Selected Juvenile Samples* at 5 (1993). Other studies reflect similar statistics. *See School Crime and Violence Statistical Review, supra; Urban High*

School Youth and Handguns: A School-Based Survey, supra. See also Centers for Disease Control Morbidity and Mortality Weekly Report, *Violence-Related Attitudes and Behaviors of High School Students – New York, 1992* (1993) (21% carry gun or weapon).

Youth are not only carrying firearms to school. They are using them at an alarming rate. Since July 1, 1992, until May 26, 1994, the National School Safety Center has been tracking intentional deaths that have occurred on school campuses. Of the 74 deaths that the Center can specifically document, 47 incidents or nearly two out of every three involved the use of firearms. *See* National School Safety Center, *School Associated Violent Deaths* at 7 (1994). Weapons, in the hands of youngsters, or in the hands of anyone, pose an increasingly serious threat to our Nation's school children. Firearms simply have no place on school campuses or adjacent areas.

B. LEGISLATION MAY REASONABLY ENSURE THE SAFETY AND SECURITY OF SCHOOLS AND SURROUNDING AREAS

Schools serve an essential and critically important function in our society. They also bear some responsibility in creating a safe school environment and in working against crime and violence in the community. Evidence has shown that up to two-thirds of the daytime burglaries nationwide are done by juveniles who are truant from school when the offenses occur. School programs that reduce truancy also reduce crime in the neighborhood. *See* National School Safety Center, *School Safety Check Book* at 69-70 (1990). But schools cannot do it alone,

and government has long taken measures to protect the operations of schools from disruption.

State and local governments have adopted various laws to restrict activities in and around schools. For example, regulations limit the possession or use of alcohol on school property or the location of establishments selling alcoholic beverages within a prescribed distance from schools. Many state legislatures have also responded specifically to school crime and violence through a variety of laws, including those addressing illicit drug use in or near schools and, as here, the possession of weapons. *See generally* J. Menacker and R. Mertz, *State Legislative Responses to School Crime*, 85 Educ. L. Rptr. 1 (1993) (compiling statutes).

As effective as some state or local regulations are or may be, they are often insufficient to deal with the crime and violence facing schools today. Use of firearms, in particular, is not just a state or local problem but a national one. "Firearm injuries among American youth are a nationwide tragedy and an international embarrassment." C. Callahan and F. Rivara, *Urban High School Youth and Handguns: A School-Based Survey*, 267 JAMA 3038 (1992).

Involvement of the federal government in the effort to curb school crime and violence is both important and essential. There are steps Congress may take to directly foster school safety. For example, some 60 percent of teachers believe the federal government should put more law enforcement officers in school neighborhoods to promote school safety. *See* Metropolitan Life Insurance Co., *The Metropolitan Life Survey of The American Teacher 1993* at

14-16 (Louis Harris & Associates, Inc., 1993). The Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q), is another such measure.

The need for a national resolve regarding firearms accessibility in and around schools is not only reflected by school crime and violence statistics, such as those previously referenced, but by the number of firearms annually becoming available. In 1991 alone the United States was the home of 79 pistol manufacturers who produced 1,381,325 pistols, 15 revolver manufacturers who produced 456,941 revolvers, 100 rifle manufacturers who produced 883,482 rifles and 31 shotgun manufacturers who produced 828,426 shotguns. The United States is also the recipient of manufactured firearms from at least 20 foreign countries. *See* Department of the Treasury – Bureau of Alcohol, Tobacco, and Firearms, *Yearly Report of Imported Firearms* (1991). The sheer size and scope of this volume of firearm manufacturing and marketing reflects and supports a direct, common-sense correlation between the weapons industry and the need for Congressional action. The limitations placed upon the federal government by the Fifth Circuit should not stand. Congress properly exercised its responsibilities under the Commerce Clause to the American citizenry, including schoolchildren, by passage of the Gun-Free School Zones Act of 1990.

C. THE FIFTH CIRCUIT'S VIEW OF EDUCATION IGNORES THE ROLE AND FUNCTION OF EDUCATIONAL INSTITUTIONS

The Fifth Circuit rejected the view taken by the District Court whereby the Gun-Free School Zones Act of 1990 was sustained on the basis "that the 'business' of elementary, middle and high schools . . . affects interstate commerce." *Lopez, supra*, 2 F.3d at 1366. By doing so, the Fifth Circuit ignored the role and function of educational institutions and effectively adopted a significant limitation on the federal government.

The Fifth Circuit expressed concern that if Congress may bar firearms possession under the Commerce Clause, why not "lead pencils, 'sneakers,' Game Boys, or slide rules"? *Lopez, supra*, 2 F.3d at 1367. To the contrary, if Congress may not bar firearms possession in and around educational institutions, then the Nation's school have lost what may have proved to be the most significant development in helping secure safe schools in recent years. Responses to school crime and violence often require a comprehensive national approach and resolve rather than a patchwork of individual state statutes.

A common means for federal regulation of schools has been conditioning compliance on receipt of federal monies. The statutes regulate the recipient of funds. *See, e.g.*, Crime Awareness and Campus Security Act, Pub. L. No. 101-542, 104 Stat. 2381 (1991).

The Commerce Clause may serve as a basis for the regulation of schools as well. In *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), for

example, the Court upheld the extension of federal minimum wage and overtime requirements to state and local governments under the Commerce Clause. The Court recognized, in particular, the substantial financial investment the federal government makes in "such services as . . . education." *Id.* at 553. Education may not be considered a purely local activity without interstate impact.

Argument concerning the validity of the Gun-Free School Zones Act of 1990 has revolved around whether a weapon has traveled in interstate commerce. Weapons, the Fifth Circuit concluded, are different than drugs. *See Lopez, supra,* 2 F.3d at 1366-67, n. 50. As recognized by this Court, Congress may regulate even purely intrastate activities that affect interstate commerce. *See, e.g., Perez v. United States,* 402 U.S. 146 (1971); *Fry v. United States,* 421 U.S. 542 (1975). Focus should be directed as in *Garcia* toward the role of educational institutions as they relate to interstate commerce and not merely the route by which a particular weapon may have arrived at or near a school.

The significance of modern schools to interstate commerce should not be obscured. No longer are we dealing with a Nation of little red schoolhouses dotting every village. Public and private schools range from the most basic to great universities undertaking research of national and global significance. Our elementary and secondary schools which benefit from the Gun-Free School Zones Act of 1990 produce not just local residents but those who will go forth throughout the Nation. The inability of Congress to deal directly with problems of firearms in and around schools, whether public or private, directly undercuts this Nation's ability to sustain a

national or global economy by directly and substantially affecting the teachers and students upon whom our future relies. The federal government has, as pointed out in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), made significant investments in education. This is an investment the federal government may rightly protect under the Commerce Clause.

The Fifth Circuit considered "simple firearms possession by ordinary citizens" to have an insufficient impact upon commerce to justify a "singular incursion" by federal legislation. *Lopez, supra*, 2 F.2d at 1364. What might be considered private activity clearly may impact interstate commerce. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964). If travelers may be protected against discrimination, then certainly students, some of whom travel to other jurisdictions to attend school, may be protected by Congress as well. Students residing in unsafe areas frequently avoid school. *See The Safe School Study Report to the Congress*, Executive Summary, *supra*, at 116. The crux of this case is not possession as such but rather where firearms may be possessed. Schools and their environs are not the place. Considering the educational and social costs of non-attendance at school and the impact on students who do attend unsafe schools, more is at issue than simple firearms possession.

There is little doubt that a disease affecting the percentages of staff and students that are affected by the possession and use of firearms in and around schools would be considered a national crisis. It is clear that firearms violence is a national public health problem. *See* M. Rosenberg, P. O'Carroll and K. Powell, *Let's Be Clear: Violence Is A Public Health Problem*, 267 JAMA 3071 (1992). It denies educational opportunity. A. Novello, Surgeon

General, *From the Surgeon General, U.S. Public Health Service*, 267 JAMA 3007 (1992). It is a matter properly addressed by Congress by enactment of the Gun-Free School Zones Act of 1990.

D. FINDINGS AND EVIDENCE WERE NOT REQUIRED TO SUPPORT ACT

Despite its invalidation of the Gun-Free School Zones Act of 1990, the Fifth Circuit did suggest that under some circumstances the Commerce Clause could support such a measure. Instead, the Fifth Circuit objected to the lack of some "finding, legislative history, or evidence" justifying its enactment. *Lopez, supra*, 2 F.3d at 1366. This rationale was appropriately rejected by the Ninth Circuit in *Edwards, supra*, which found (citing previous cases of this Court) that particularized findings are not required.

To the extent that legislative history is required to support the Gun-Free School Zones Act of 1990 under the Commerce Clause, such history does not depend upon isolated findings. As in *Garcia, supra*, the "longstanding" federal role in education may be considered. *Garcia, supra*, 469 U.S. at 552. Also, Congressionally initiated studies, such as *The Safe School Study Report to the Congress, supra*, are relevant.

The Gun-Free School Zones Act of 1990 may be bolstered by other legislative measures aimed at making schools safe and welcoming such as that enacted to create a "drug-free zone" around schools which was upheld by both the Fifth and Ninth Circuits. *See United States v. Crew*, 916 F.2d 980 (5th Cir. 1990); *United States v. Thornton*, 901 F.2d 738 (9th Cir. 1990). The Fifth Circuit noted in

Crew how neighborhoods may be held hostage by drug activity. *Crew, supra,* 916 F.2d at 984. Access to and use of firearms is closely associated with drug activity. *See, e.g., Urban High School Youth and Handguns: A School-Based Survey, supra,* at 3040 ("strongest associations with handgun access" include "selling drugs"). The Court should accept a Congressional pattern as sufficient history without special findings with respect to each element of that approach.

The Fifth Circuit puts an unnecessary procedural cart before the substantive horse. Under the circumstances, a substantial impact upon interstate commerce is established without further finding, legislative history, or evidence.

CONCLUSION

This case is significant because it limits the authority of Congress to undertake measures to help make schools safe and welcoming. Such authority does exist under the Commerce Clause. The Fifth Circuit should be reversed and the Gun-Free School Zones Act of 1990 upheld.

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Respectfully submitted,

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